



**BILLING CODE: 4510-FN-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Employment and Training Administration (ETA) Program Year (PY) 2018**

**Workforce Innovation and Opportunity Act (WIOA) Section 167, National Farmworker Jobs Program (NFJP) Formula Modifications and Allotments**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This Notice announces updates and modifications to the allotment formula for the National Farmworker Jobs Program (NFJP), authorized under the Workforce Innovation and Opportunity Act (WIOA), Section 167, and allotments for Program Year (PY) 2018. These allotments are based on the enacted NFJP funding appropriation in the Consolidated Appropriation Act, 2018.

On May 23, 2018, the Employment and Training Administration (ETA) published a notice in the **Federal Register** (83 FR 23937) concerning the use of updated data in and proposed modifications to the formula ETA uses to distribute funding for NFJP. The notice also presented preliminary State planning estimates for PY 2018. Public comments were requested at that time. The comment period closed May 30, 2018. This notice summarizes and responds to the comments, and publishes the final PY 2018 allotments.

**DATES:** The PY 2018 NFJP allotments cover July 1, 2018 through June 30, 2019.

**ADDRESSES:** Questions on this notice can be submitted to [NFJP@dol.gov](mailto:NFJP@dol.gov) or the

Employment and Training Administration, Office of Workforce Investment, 200 Constitution Ave., N.W., Room C4510, Washington, DC 20210, Attention: Laura Ibañez, Unit Chief, (202) 693-3645 or Steven Rietzke, Division Chief at (202) 693-3912.

**FOR FURTHER INFORMATION CONTACT:** Laura Ibañez, Unit Chief, (202) 693-3645 or Steven Rietzke, Division Chief at (202) 693-3912.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to Section 182(d) of the WIOA, Prompt Allotment of Funds.

## **I. Background**

This notice represents the second of a two-stage process. In the first stage, ETA solicited and considered public comments regarding the use of updated data in and three proposed modifications to the NFJP allotment formula. Based on the comments and ETA's consideration of them, ETA has applied the updated data to the formula and implemented two of the three proposed modifications. In this second stage, the final formula modifications are described and the resulting allotments are published. The updated data and modifications have been processed in accordance with the allotment formula methodology, which was described in detail in a notice that was published in the **Federal Register** on May 19, 1999 (64 FR 27390), which is accessible at <https://www.federalregister.gov/>.

The formula was developed for the purpose of distributing funds geographically by State service area, on the basis of each State service area's relative share of persons eligible for the program. New data from each of the four data files that have been the basis of the formula since 1999 are used to determine the distribution of PY 2018 funds.

In addition, beginning in PY 2018, ETA will implement two modifications to the allotment formula, which will result in more accurate estimates of each State service area's relative share of persons eligible for the program. The modifications are the result of ETA's review of the formula in the context of the NFJP-eligible population and farm labor market changes, ETA's consideration of public comments received in response to the May 23, 2018 *Federal Register* Notice (FRN) (83 FR 23937), and feedback that it received from NFJP grantees prior to and following informational webinars that ETA hosted on February 23, 2017, and April 27, 2017.

Section II of this notice reviews the formula updates and modifications that were proposed in the May 23, 2018 notice.

Section III summarizes the comments that ETA received in response to the May 23, 2018 notice and ETA's decisions concerning the allotment formula based on those comments.

Section IV describes a hold-harmless provision, which will be put into place for the implementation year and the following years. The hold-harmless provision is designed to provide a staged transition from old to new funding levels for State service areas. This was also proposed and discussed in the May 23, 2018 FRN (83 FR 23937).

Section V describes minimum funding provisions to address State service areas which would receive less than \$60,000.

Section VI describes the application of the formula and the hold-harmless provision using allotments for PY 2018.

## **II. Formula Updates and Modifications**

As with all State allotments since 1999, the PY 2018 allotments are based on four data sources: (1) State-level, hired farm labor expenditure data from the United States Department of Agriculture's (USDA) Census of Agriculture (COA); (2) regional-level, average hourly earnings data from the USDA's Farm Labor Survey (FLS); (3) regional-level, demographic data from ETA's National Agricultural Workers Survey (NAWS); and, (4) Lower Living Standard Income Level data from the United States Census Bureau's American Community Survey (ACS). The PY 2018 allotments are based on 2012 COA and FLS data, 2006 to 2014 NAWS data, and 2010 to 2014 ACS data. A detailed description of how each data source is used in the formula is in the May 19, 1999 FRN (64 FR 27390) on pages 27396 to 27399.

In addition to populating the formula with new data, two modifications have been implemented. Both are "back-out" adjustments to the COA hired labor expenditures (Wage Bill) to account for: (1) Unemployment Insurance (UI) payroll tax payments made on behalf of farmworkers; and (2) expenditures on H-2A workers. A third modification was proposed to align the allotment formula with the definition of dependent under WIOA Section 167(i)(2)(B) and (3)(B) by accounting for eligible dependents ages 14 and over of eligible Migrant and Seasonal Farmworkers (MSFW) in each State's share of the total eligible population. However, based on public comments and ETA's consideration of them, the third modification will not be implemented. The rationale for not implementing this modification is described in Section III, below.

Modifications 1 and 2 more accurately estimate each State's share of the NFJP-eligible population. Modification 1 removes non-wages from COA farm labor expenditures. UI payroll tax payments, which vary by State, are not wages.

Modification 2 removes labor expenditures on H-2A workers from COA farm labor expenditures to align the allotment formula with the NFJP-eligible population. Therefore, including the UI payroll tax payments and labor expenditures on H-2A workers in the formula did not accurately count the number of eligible NFJP participants.

### **III. Response to Public Comments**

ETA received a total of 24 comments from four commenters. Nine comments were general in nature, one concerned Modification 1, two concerned Modification 2, nine concerned Modification 3, and three concerned state-specific issues. The following is a summary of these comments and ETA's response.

#### *A. General Comments*

General comments concerned basic elements of the formula, applying newer data to and modifying the formula, support for including a hold-harmless mechanism, and questions about how a hold-harmless works. Several of the general comments were supportive of using updated data in and modifying the allotment formula. Support for the modifications, however, was limited to modifications 1 and 2: backing out UI and H-2A expenditures from the COA Wage Bill, respectively. Two general comments concerned the accounting of work-authorized farmworkers in the formula. One commenter opined that no modification was made to account for farmworkers who do not have authorization to work in the United States, and one commenter inquired if ETA used 2013-2014 NAWS data on work authorization status to determine the total number of NFJP-eligible individuals. One commenter opined that the data used in the formula will not fully capture the totality of MSFWs to whom grantees provide services, while another opined that the Legal Services Corporation's allotment formula is a better representation of the

NFJP-eligible population. Lastly, there was a general question about how the hold-harmless mechanism affects grantees' percentage of the allotment.

ETA used nine years (2006-2014) of regional-level NAWS data to determine the share of crop hours in each state that were performed by NFJP-eligible crop workers. The eligibility criteria included whether a crop worker was authorized to work in the United States. The application of NAWS data to the allotment formula is discussed in greater detail in the May 19, 1999 FRN (64 FR 27390) on pages 27397 to 27399. While ETA is aware that the formula does not account for the totality of the NFJP-eligible population, it is not aware of data sources that could be used to estimate subpopulations of NFJP-eligible farmworkers that would meet the requirements for allotment formula of accuracy, transparency, and reliance on published data.

Although there are similarities between the LSC and ETA formula, they are different, because they are constructed for different purposes. While LSC's formula is designed to estimate the total number of agricultural workers and their dependents who are eligible for LSC-funded services, ETA's formula is concerned with determining each State service area's relative share of the NFJP-eligible population. Therefore, ETA will not adopt the LSC formula.

The hold-harmless functions in the following manner. There is a limited total amount of funding to be distributed to all of the states. For states that would have lost funds based on the formula without the hold-harmless, when the hold-harmless is applied, funding must be reduced from other states that did not fall below the hold-harmless to make up the shortfall. This reduction is implemented by formula proportionally across the affected states. In some cases, this can result in a state experiencing a reduction in

funding with the hold-harmless provision even though it would have experienced an increase without the hold-harmless provision. However, in no instance will a state's funding fall below the hold-harmless level.

*B. Modification 1 Comment*

One commenter agreed that it was appropriate to remove UI payroll tax payments from Census of Agriculture farm labor expenditures (Modification 1), noting that UI payments are not wages, and UI rules, regulations, and rates vary by State.

ETA is pleased that it is now possible to back out this number from the calculation of the NFJP allotment formula.

*C. Modification 2 Comments*

One commenter questioned the backing out of H-2A expenditures from COA expenditures (Modification 2) due to: (1) a recent increase in the number of foreign-born farmworkers employed through the H-2A program, which could create an increase in emergencies for which NFJP grantees will be asked to provide assistance; and (2) a greater coordination, stemming from the enactment of the WIOA, between State Monitor Advocates (SMA) and NFJP grantees regarding the provision of emergency services for H-2A farmworkers.

ETA has determined that Modification 2 is needed to strike a balance between ETA policy concerning the utilization of grant funds for emergency services and the primary purpose of NFJP, which is to strengthen the ability of eligible MSFWs and their dependents to obtain or retain unsubsidized employment, stabilize their unsubsidized

employment, and achieve economic self-sufficiency, including upgraded employment in agriculture (WIOA 20 CFR 685.100).

#### *D. Modification 3 Comments*

Of the nine comments concerning Modification 3, only one was supportive. Generally, commenters expressed concern that Modification 3 caused big changes in funding levels for some states, particularly those in the Midwest that have large numbers of animal agricultural workers relative to crop workers. One commenter pointed out that the Department was able to estimate the share of animal agricultural workers in each state with income below the Lower Living Standard Income Level (LLSIL) and inquired if the Department was also able to estimate the number of dependents of animal agricultural workers and, if not, whether it would be possible to assume animal agricultural and crop workers are similar with respect to the number of their offspring. Another commenter opined that the Department should either use data on crop workers to estimate the number of dependents of animal agricultural workers or drop Modification 3. One commenter inquired if the Department had used NAWS data to account for eligible dependents of eligible MSFWs in each State's share of the total NFJP-eligible population and, if so, had it accounted for the fact that some children of farmworkers are themselves farmworkers, while another commenter opined that the Department triple-counted dependents because some are themselves farmworkers and some have two farmworker parents. Lastly, one commenter expressed concern that grantees were not given sufficient time to comment on Modification 3.



ETA informed the public through the May 23, 2018 FRN (83 FR 23937) of its proposal to use NAWS data to estimate, by region, the average number of NFJP-eligible dependents ages 14 and above per MSFW-eligible crop worker and, in doing so, accounted for the fact that some dependents are themselves farmworkers.

Based on the public comments received, ETA agrees with the comments that states with large numbers of animal agricultural workers relative to crop workers would be unfairly impacted by this modification. As such, it has not applied Modification 3 to the PY 2018 allotment formula. Should survey data on animal agricultural workers, like NAWS data on crop workers, become available, ETA would reconsider applying this modification to the formula and would give the public an opportunity to comment.

Although in some circumstances it may be appropriate to use demographic data collected from crop agricultural workers to estimate the characteristics of animal agricultural workers, ETA does not believe it would be appropriate to use crop worker data to estimate, by region of the country, the average number of NFJP-eligible dependents per eligible MSFW employed in animal agriculture. Doing so would require ETA to make a large number of assumptions, which would fail to adhere to the requirements for allotment formula of accuracy, transparency, and reliance on published data.

Regarding the question and opinion about over-counting dependents of crop workers, ETA confirms that it did not over-count these dependents. ETA reviewed the analysis program that was used to estimate, by region, the average number of eligible dependents ages 14 and over per eligible MSFW and confirms that dependents who themselves worked in agriculture were not included in the analysis. Furthermore, crop workers in

families where the spouse was also a farmworker were weighted appropriately, so that the number of dependents in such families was not overestimated.

ETA will include background analyses steps, such as these, in a future FRN concerning changes to the allotment formula involving the calculation of dependents, should it ever determine that it is able to account for eligible dependents of eligible MSFWs employed in animal agriculture in the NFJP allotment formula.

#### *E. State-specific Comments*

Two commenters inquired how a particular state would be impacted by the hold-harmless, and one inquired about the breakdown of funds, within a particular state, by grantee.

ETA would like to clarify that a State's hold-harmless is not based on its PY 2018 allotment percentage share without the hold-harmless. The calculation is based on 95 percent of its PY 2017 allotment percentage share (column 2) as applied to the PY 2018 formula funds available.

Regarding the breakdown of a State's award by grantee within that State, ETA will provide this information when it issues its final allotment TEGL.

#### **IV. Description of the Hold-Harmless Provision**

For PY 2018, 2019, and 2020, the Department intends to apply a hold-harmless provision to the allotment formula in order to allow a staged transition from the application of the previous formula to the modified formula. The hold-harmless provision provides for a stop loss/stop gain limit to transition to the use of the updated

data. Due to the length of time since the data has been updated, it is anticipated there may be significant changes for a few states, necessitating the stop loss/stop gain approach. The stop loss/stop gain approach is based on a State service area's previous year's allotment percentage share, which is its relative share of the total formula allotments. The staged transition of the hold-harmless provision will be implemented specifically as follows:

(1) In PY 2018, State service areas will receive an amount equal to at least 95 percent of their PY 2017 allotment percentage share, as applied to the PY 2018 formula funds available;

(2) In PY 2019, State service areas will receive an amount equal to at least 90 percent of their PY 2018 allotment percentage share, as applied to the PY 2019 formula funds available;

(3) In PY 2020, State service areas will receive an amount equal to at least 85 percent of their PY 2019 allotment percentage share, as applied to the PY 2020 formula funds available.

In PY 2018, 2019, and 2020, the hold-harmless provision also provides that no State service area will receive an amount that is more than 150 percent of their previous year's allotment percentage share.

In PY 2021, since the Department has a responsibility to use the most current and reliable data available, amounts for the new awards will be based on updated data from the sources described in Section II, pending their availability. At that time, the Department will determine whether the changes to State allotments are significant enough to warrant another hold-harmless provision. Otherwise, allotments to each State

service area will be for an amount resulting from a direct allotment of the proposed funding formula without adjustment.

## **V. Minimum Funding Provisions**

A State area that would receive less than \$60,000 by application of the formula will, at the option of the DOL, receive no allotment or, if practical, be combined with another adjacent State area. Funding below \$60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a State jurisdiction that would receive less than \$60,000 may be combined with another adjacent State area.

## **VI. Program Year 2018 Allotments**

The state allotments set forth in the Table appended to this notice reflect the distribution resulting from the allotment formula described above. For PY 2017, \$81,896,000 was appropriated for migrant and seasonal farmworker programs, of which \$75,505,575 was allotted on the basis of the old formula after \$407,010 was set aside for program integrity. The remaining \$5,489,415 of the PY 2017 appropriation was retained to fund housing grants after \$27,585 was set aside for program integrity, and \$494,000 was retained for Training and Technical Assistance. The figures in the first numerical column show the actual PY 2017 formula allotments to State service areas. The next column shows the percentage of each allotment.

For PY 2018, the funding level provided for in the Consolidated Appropriations Act, 2018 for the migrant and seasonal farmworker program is \$81,203,000 and will be allotted on the basis of the formula. For purposes of illustrating the effects of the

allotment formula, the State service area allotments with the application of the first-year (95 percent) hold-harmless and minimum funding provisions, followed by the percentages, are shown in columns 3 and 4. The difference between PY 2017 and PY 2018 allotments are shown in column 5. The sixth column of the Table shows the allotments based on the formula without the application of the hold-harmless or minimum funding provisions. The percentages are reported in column 7.

**Rosemary Lahasky,**

*Deputy Assistant Secretary for Employment and Training, Labor.*

U. S. Department of Labor							
Employment and Training Administration							
National Farmworker Jobs Program							
Impact of Final PY 2018 Allotments to States							
	PY 2017		PY 2018 (UI, H-2A Adj)				
	Allotment (1)	Percentage Share (2)	With hold harmless			Without hold harmless	
State			Allotment (3)	Percentage Share (4)	Difference (PY 2018 vs. PY 2017) (5)	Allotment (6)	Percentage Share (7)
<b>Total</b>	<b>\$75,505,575</b>	<b>100.00000</b>	<b>\$81,203,000</b>	<b>100.00000</b>	<b>\$5,697,425</b>	<b>\$81,203,000</b>	<b>100.00000</b>
Alabama	764,119	1.01200	780,688	0.96140	16,569	768,204	0.94603
Alaska	-	0.00000	-	0.00000	-	-	0.00000
Arizona	2,057,698	2.72523	2,208,505	2.71973	150,807	2,432,392	2.99545
Arkansas	1,104,657	1.46301	1,128,611	1.38986	23,954	1,096,396	1.35019
California	19,283,115	25.53866	20,302,807	25.00253	1,019,692	22,360,997	27.53716
Colorado	964,874	1.27788	1,172,108	1.44343	207,234	1,290,930	1.58976
Connecticut	340,039	0.45035	350,127	0.43117	10,088	385,621	0.47489
Delaware	122,461	0.16219	135,621	0.16701	13,160	149,369	0.18395
Dist of Columbia	-	0.00000	-	0.00000	-	-	0.00000
Florida	4,000,446	5.29821	4,087,192	5.03330	86,746	3,606,857	4.44178
Georgia	1,478,430	1.95804	1,510,489	1.86014	32,059	1,602,040	1.97288
Hawaii	318,882	0.42233	325,797	0.40121	6,915	308,641	0.38009
Idaho	1,037,089	1.37353	1,546,823	1.90488	509,734	1,703,632	2.09799
Illinois	1,386,739	1.83660	1,520,015	1.87187	133,276	1,674,107	2.06163
Indiana	891,099	1.18018	996,927	1.22770	105,828	1,097,990	1.35215
Iowa	1,135,326	1.50363	1,381,814	1.70168	246,488	1,521,896	1.87419
Kansas	1,037,193	1.37366	1,061,734	1.30751	24,541	1,169,367	1.44005
Kentucky	1,168,337	1.54735	1,193,671	1.46998	25,334	1,000,708	1.23235
Louisiana	878,803	1.16389	897,859	1.10570	19,056	764,787	0.94182
Maine	282,793	0.37453	288,925	0.35581	6,132	315,182	0.38814
Maryland	349,786	0.46326	357,371	0.44010	7,585	370,569	0.45635
Massachusetts	310,726	0.41153	317,464	0.39095	6,738	349,258	0.43010
Michigan	1,350,141	1.78813	1,852,921	2.28184	502,780	2,040,761	2.51316
Minnesota	1,190,716	1.57699	1,418,215	1.74651	227,499	1,561,987	1.92356
Mississippi	1,251,630	1.65767	1,278,771	1.57478	27,141	929,482	1.14464
Missouri	951,239	1.25983	971,866	1.19684	20,627	944,305	1.16289
Montana	576,293	0.76325	588,789	0.72508	12,496	602,338	0.74177
Nebraska	1,049,996	1.39062	1,127,274	1.38822	77,278	1,241,551	1.52895
Nevada	173,439	0.22970	177,200	0.21822	3,761	182,939	0.22529
New Hampshire	98,352	0.13026	100,577	0.12386	2,225	110,773	0.13641
New Jersey	671,802	0.88974	686,369	0.84525	14,567	577,864	0.71163
New Mexico	913,490	1.20983	933,298	1.14934	19,808	1,005,311	1.23802
New York	1,598,538	2.11711	1,633,201	2.01126	34,663	1,509,341	1.85873
North Carolina	2,596,474	3.43878	2,652,776	3.26684	56,302	2,528,390	3.11367
North Dakota	586,161	0.77631	720,475	0.88725	134,314	793,513	0.97720
Ohio	1,215,667	1.61004	1,242,028	1.52953	26,361	1,358,636	1.67314
Oklahoma	1,228,006	1.62638	1,254,634	1.54506	26,628	844,974	1.04057
Oregon	1,902,686	2.51993	2,129,586	2.62255	226,900	2,345,472	2.88841
Pennsylvania	1,490,645	1.97422	1,522,968	1.87551	32,323	1,424,004	1.75363
Puerto Rico	2,950,975	3.90829	3,014,964	3.71287	63,989	2,279,197	2.80679
Rhode Island	37,337	0.04945	52,828	0.06506	15,491	58,183	0.07165
South Carolina	932,956	1.23561	953,186	1.17383	20,230	777,471	0.95744
South Dakota	598,476	0.79262	611,453	0.75299	12,977	585,156	0.72061
Tennessee	827,313	1.09570	845,253	1.04091	17,940	857,454	1.05594
Texas	6,438,740	8.52750	6,578,359	8.10113	139,619	4,828,716	5.94647
Utah	279,058	0.36959	406,255	0.50030	127,197	447,439	0.55101
Vermont	184,099	0.24382	188,091	0.23163	3,992	178,027	0.21924
Virginia	895,239	1.18566	914,652	1.12638	19,413	960,818	1.18323
Washington	2,981,590	3.94883	3,931,488	4.84156	949,898	4,330,041	5.33237
West Virginia	189,444	0.25090	193,552	0.23836	4,108	123,103	0.15160
Wisconsin	1,206,739	1.59821	1,426,806	1.75709	220,067	1,571,448	1.93521
Wyoming	225,722	0.29895	230,617	0.28400	4,895	235,363	0.28985

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